

Statewide Plan for Implementing Quality Improvement: Year Two Report

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**Office of Indigent
Legal Services**

Improving the quality of mandated representation
throughout the state of New York

Table of Contents

Introduction	1
The Importance of Quality Representation	2
Defining and Measuring Quality Representation	3
I. Supervision	4
II. Trainings and CLE's	8
III. Non-Attorney Professional Services	13
IV. Effective Client Communication	17
V. Attorney Qualifications and Experience	20
VI. Assigned Counsel Program Quality Improvement	24
VII. Data Reporting Infrastructure	29
VIII. Enhanced Professionalism, Efficiency, and the Capacity to Effectively Use Discovery ..	32
Conclusion	34
Appendices	36

Introduction

The New York State Office of Indigent Legal Services (ILS), pursuant to Executive Law § 832 (4) (c) (ii) submits this written status update report addressing Year 2 of implementation of ILS' December 1, 2017 Statewide Plan for Quality Improvement (Quality Improvement Plan).

Executive Law § 832 (4) (c) requires ILS to ensure that attorneys providing constitutionally mandated, publicly funded representation in criminal cases for people who are unable to afford counsel: (A) receive effective supervision and training; (B) have access to and appropriately utilize investigators, interpreters and expert witnesses on behalf of clients; (C) communicate effectively with their clients; (D) have the necessary qualifications and experience; and (E) in the case of assigned counsel attorneys, are assigned to cases in accordance with Article Eighteen-B of the County Law and in a manner that accounts for the attorney's level of experience and caseload/workload. This report details funding and developments directly related to these factors. It also addresses data reporting infrastructure as well as the tools needed for enhanced professionalism, efficiency, and the capacity to effectively use the ever-expanding volume of materials provided to attorneys during the pretrial discovery process. Although the reduction of caseload pressures also directly impacts the quality of representation, that topic is the subject of its own report pursuant to Executive Law § 832 (4) (b) (iv). This report does not, therefore, focus upon the ongoing and significant progress of ILS' efforts toward achievement of caseload reduction, such as hiring and office space expansion, except where the addition of staff is substantially related to the above-referenced quality indicators.

The report's structure examines each of the above-referenced quality indicator categories individually, providing the context for reform for the topic and a data driven overview of the structures and programs ILS is funding to achieve quality mandated criminal defense representation. In addition, we provide highlights demonstrating how these structures and programs are working.

The evolving nature of the budgeting process shapes the presentation of the specific data utilized by the report to elucidate the progress that ILS has achieved in the area of quality improvement. ILS must work directly with over 130 individual providers in 52 upstate counties and New York City. Budget negotiations involve both local government officials and Chief Defenders. This interpersonal, complex, and time-intensive process is subject to a variety of factors including the staffing and workload of all participants and trepidation concerning the stability of existing New York State funding streams arising from the ongoing pandemic. Moreover, as ILS' first annual Quality Improvement Report reveals, prior to commencing the intricate work on Year 1 budgets, ILS undertook a massive effort to develop an overall quality plan for each county and then negotiate a five-year contract.¹ As a result of this initial undertaking, counties are at different stages of the Year 2 budget process. Although nearly all counties have achieved significant progress with their Year 2 budget development, not all counties have completed that process. Consequently, this report provides an aggregate view of the funded structures and programs

¹ ILS would like to recognize the outstanding work of its first Statewide Implementation Chief, Joanne Macri, whose tireless energy and momentous contribution toward establishing the foundation for implementation of these reforms will benefit New York's public defense programs and the clients they serve for years to come.

based on an analysis of all 53 Statewide contracts, relying upon the budgets for the completed contracts. All 52 counties and New York City have fully executed contracts with a Year 1 budget. At the time of data collection for this report, 21 counties also had an approved Year 2 budget. For these 21 counties, we analyze what is funded in both Year 1 and Year 2.² After providing an aggregate of the structures and programs being funded, we provide a more detailed snapshot of significant efforts in a cross-section of the individual counties, highlighting the unique ways in which counties are achieving quality representation. The individual highlights also encompass anticipated completion of Year 2 budgets in some counties nearing completion of the Year 2 budget process.

The Importance of Quality Representation

The pressing need to ensure quality representation for public defense clients finds its roots deeply entrenched in fundamental notions of justice and humanity. In a letter written from the Birmingham Alabama jail, the Reverend Dr. Martin Luther King wrote that “[i]njustice anywhere is a threat to justice everywhere.” Dr. King explained that “[w]e are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”³ When the criminal justice system fails to provide quality representation for people simply because they lack the resources to afford counsel, it delegitimizes the entire system and fails society. Basic decency and respect for our fellow human beings is at stake. As explained by modern day civil rights leader and Executive Director of the Equal Justice Initiative, Bryan Stevenson, “[y]ou ultimately judge the civility of a society not by how it treats the rich, the powerful, the protected, and the highly esteemed, but by how it treats the poor, the disfavored, and the disadvantaged.”⁴ The systemic reforms demanded by Executive Law § 832, which include the quality improvement measures described in this report, play a vital role in the path toward achieving quality representation. Indeed, “[w]ithout an assurance of adequate assistance of counsel for the indigent, the law draws a line between rich and poor, ensuring a fair trial to those on one side of the line and denying a fair trial to those on the other.”⁵

These reforms also work to rectify the racial injustice that has plagued our criminal justice system for so long. As eloquently explained by Professor Ogletree:

Moreover, failure to provide adequate assistance of counsel to accused indigents draws a line not only between rich and poor, but also between white and black. For the first time in our nation's history, the number of people who are incarcerated in jails and prisons surpasses one million. Recent reports indicate that unprecedented numbers of African-Americans, particularly young males, are

² These 21 counties are: Albany, Clinton, Cortland, Delaware, Dutchess, Fulton, Hamilton, Lewis, Monroe, Montgomery, Nassau, Orleans, Otsego, Saratoga, Schoharie, Steuben, Sullivan, Tioga, Warren, Wayne, and Wyoming

³ King, Martin L. *Letter from the Birmingham Jail*. San Francisco: Harper San Francisco, 1994. Print.

⁴ Stevenson, Bryan. *Just Mercy: A Story of Justice and Redemption*. First edition. New York: Spiegel & Grau, 2014.

⁵ Ogletree, Charles J. Jr., *An Essay on the New Public Defender for the 21ST Century*, *Journal of Law and Contemporary Problems*, Vol. 58, No.1 (1995) (“Ogletree, *The New Public Defender*”).

involved in the criminal justice system. When discussing the inadequacies of the current system of providing counsel for the accused poor, one cannot ignore the correlation between race and poverty. If the criminal justice system deprives the poor generally of the right to a fair trial, that burden will fall disproportionately on communities of color because of the greater incidence of poverty in these communities and, hence, their greater reliance on public defender services.⁶

At the end of the day, the provision of quality representation is about the fight for equal justice for all. As John Lewis so powerfully stated at a Gideon’s Promise event in 2011 speaking about public defenders:

I’ve been arrested a few times... And it was lawyers, unbelievable courageous men and women of the bar that came to my rescue. They defended us... If it hadn’t been for the lawyers during that period, I don’t know where we would be as a nation and as a people... Thank you for getting in the way. For defending those who have been left out and left behind.⁷

In implementing these hard-earned systemic reforms, ILS will always maintain laser like focus upon the principles described above, and never lose sight of the indisputable truth that our ability to live in a society where equal rights and justice for all is inextricably intertwined with support for high quality public defense representation.

Defining and Measuring Quality Representation.

At this early stage of the statewide reform effort, ILS continues to concentrate upon firmly establishing the pre-requisite conditions that will enable quality representation to occur on a widespread scale. Executive Law § 832 (4) provides specific guidance, setting out certain core categories that encompass critical features underlying the provision of quality representation. ILS views those categories through the lens of well-established state and national criminal defense standards. The wisdom of this approach is underscored by the observation in the final report of the Commission on the Future of Indigent Defense Services’ (“Kaye Commission”) that “[t]he consequence of having unenforced standards” is that “in some areas, substandard practice has become the acceptable norm.”⁸ The Kaye Commission understood that the non-existence of a “statewide standard that defines ‘adequate’ indigent defense” and the utter lack of a “mechanism to enforce any particular set of standards” was a key reason that the “current fragmented system of county-operated and largely county-financed indigent defense services fails to satisfy the state’s constitutional and statutory obligations to protect the rights of the indigent accused.” An approach that tracks professional standards and insures that funding initiatives adhere to these standards, therefore, comprises a robust set of metrics that, when fully implemented, will ensure that attorneys in every single program throughout New York State

⁶ Ogletree, *The New Public Defender*.

⁷ A video of this speech is available at: <https://www.gideonspromise.org/impact/a-tribute-to-congressman-john-lewis/>

⁸ The Commission on the Future of Indigent Defense Services, FINAL REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, June 2006, at 16. The Kaye Commission report is available at: http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf.

possess the resources, skills, and commitment necessary to provide high quality representation for each and every client entitled to constitutionally mandated counsel in criminal cases.

I. Supervision

Executive Law § 832 (4) (c) (i) (A) requires that attorneys receive effective supervision. Existing state and national performance standards that focus upon public defense organizational responsibilities consistently echo this requirement. For instance, in October 1995, the Appellate Division, First Department, established the Indigent Defense Organization Oversight Committee (“IDOOC”) to monitor the operation of organizations that contract with the City of New York to represent indigent defendants in criminal proceedings. The IDOOC standards state that “[q]uality representation requires that defense organizations provide adequate supervision on a continuing basis for lawyers and professionals providing support services, with the amount of supervision varying inversely to the experience of the persons supervised.” The standard further states that “[e]ven a defense organization composed entirely of experienced professionals should provide supervision to monitor compliance with client needs and the requirements of the courts.”⁹ The American Bar Association includes supervision as one of its ten fundamental principles for the delivery of public defense systems declaring that defense organizations must ensure that “[d]efense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.”¹⁰ Similarly, the 2019 ILS Standards for Establishing and Administering Assigned Counsel Programs (ACP Standards) require that each assigned counsel program (ACP) “shall ensure that its panel is appropriately supervised by an attorney or attorneys.” The ACP standards concur that “[s]tructured supervision is vital to quality representation” and note that the “supervision requirement is consistent with the reforms delineated in the Hurrell-Harring Settlement, which includes a mandate that affected counties adopt initiatives to improve the quality of indigent defense as to supervision.”¹¹

The reasons underlying the mandate for supervision are clear. Supervision reduces the risk that attorneys, whether experienced or inexperienced, will make a mistake that adversely impacts the life and future of their clients. As expressed by NAPD Foundational Principle 7, “the objective of supervision is to assure that all defense services provided by lawyers are competent within the meaning of rules of professional conduct and effective pursuant to prevailing professional standards.” Clients also benefit from increased supervision because supervising attorneys frequently assist with implementing structural improvements within a program that enhance the overall quality of representation such as facilitating data collection and encouraging

⁹ General Requirements for All Organized Providers of Defense Services to Indigent Defendants July 1, 1996. *Indigent Defense Organization Oversight Committee (IDOOC)*. Standard IV.A.

¹⁰ American Bar Association, Ten Principles of a Public Defense Delivery System, Principle 10, February 2002. See also National Association for Public Defense Foundational Principle 7: Appropriate Supervision of All Public Defense and Other Public Defense Professionals is Essential. (NAPD Principles).

¹¹ ILS ACP standard 4.2.a. Supervision. ILS ACP standards are available at: <https://www.ils.ny.gov/content/assigned-counsel-program-standards>.

collaboration and camaraderie among the staff. Additionally, an increase in supervisory positions ensures that the chief defender has time to handle the myriad responsibilities attendant to running an office.

Another benefit of creating supervisory positions is that it creates space for promotions within the office. Prior to statewide implementation of the *Hurrell-Harring* settlement reforms (“Statewide”), the structure of many offices consisted of a Public Defender, perhaps a First Assistant Public Defender, and a cadre of assistant defenders. The assistant defenders all possessed the same basic responsibilities with little room for professional advancement. By utilizing Statewide funding to create supervisory positions, offices also generate opportunities for promotions, thereby encouraging the retention of more experienced attorneys.

Supervision is a multi-faceted enterprise. On its most fundamental level, “supervision should determine if sufficient time, thought, and resources are being devoted to a wide variety of defense tasks, such as interviewing and counseling of clients, securing pretrial release of incarcerated clients, completion of fact investigations prior to formulating recommendations about plea agreements, formal and informal discovery is conducted, and preparation for pretrial hearings, trials, and sentencing proceedings.”¹² But effective supervision also requires public defense programs to consider the varied experience level of its attorneys and implement systems that address the needs of attorneys new to the practice of criminal defense, attorneys who are progressing toward handling cases of increasing complexity, as well as for experienced attorneys charged with representation of clients in highly complex cases that may need research into, and investigation of, emerging science and technology.

Ensuring supervision within Public Defender, Conflict Defender, or Legal Aid Society offices requires both the creation of supervisory positions and specialized units. Both endeavors rely upon ILS’ caseload reduction efforts. As noted in last year’s Quality Improvement Report, “supervising attorneys must have reduced caseloads.”¹³ This entails the addition of staff so that experienced attorneys will have the time to provide the necessary supervision. Similarly, ILS supports the creation and staffing of specialized units to address cases that present complex forensic issues or that support representation in serious homicide and/or sexual offense cases. The attorneys in these units possess the knowledge and skills necessary to provide guidance to even experienced attorneys. Finally, ILS encourages the creation of trial practice groups, which consist of small groups of attorneys meeting regularly to discuss case strategy, identify legal issues, identify areas of needed investigation, and provide a forum to discuss any aspect of the case.

¹² National Association for Public Defense (NAPD) Foundational Principle 7: Appropriate Supervision of All Public Defense and Other Public Defense Professionals is Essential.

¹³ See also General Requirements for All Organized Providers of Defense Services to Indigent Defendants, July 1, 1996. *Indigent Defense Organization Oversight Committee (IDOOC)*. See standard V.B.2.c. (“Individual supervising lawyers’ personal caseloads should not exceed 10% of the maximum caseload, unless the ratio of staff lawyers to supervising lawyers is less than 10:1, in which case supervising lawyers’ caseloads may be proportionally higher (e.g., 20% of the maximum caseload if the staff lawyer to supervising lawyer ratio is 5:1.”)).

Supervision in the assigned counsel context similarly requires the development and implementation of supervisory structures. In addition to the hiring of a Supervising Attorney, whose primary function is to assist the administrator “in ensuring that each individual assigned counsel provides quality representation,” ILS’ ACP standards encourage ACPs to develop mentoring and resource attorney programs. As explained by the standards,

Mentoring involves more experienced and highly qualified attorneys working closely with less experienced attorneys to foster their professional growth and development. It is a well-recognized means of helping new attorneys develop criminal defense or family law representation skills, acquire legal knowledge, build confidence and competence, and enhance professionalism. Mentoring also promotes a culture of collaboration among attorneys.¹⁴

Developing supervisory capacity within an ACP must also encompass the needs of experienced attorneys. ILS is encouraging ACPs in their effort to enlist experienced attorneys to serve as resource attorneys so that assigned counsel attorneys have access to consultation when working on complex cases or cases that present challenging, novel, or systemic issues arising during individual representation. Finally, as is occurring in the context of institutional providers, ILS is also engaged in the process of assisting ACPs with the creation of specialized units to support attorneys presented with cases involving forensic or other specialized issues. Overall, as described in greater detail in the section of this report relating to ACP development, the goal is to place ACPs on equal footing with institutional provider offices in terms of their ability to provide supervision and ensure high quality of representation of assigned private counsel clients.

The Numbers

Consistent with the imperative for supervision, ILS has worked with the 52 counties and New York City to ensure that Statewide funding is available to bolster existing supervisory structures and, in some cases, create new supervision structures. A review of the Statewide contracts reveals that considerable progress has been made in making funding available for supervision infrastructure, and as a result:

- **30 out of the 53 Statewide contracts (56.6%)** include funding to hire¹⁵ **attorneys with supervisory responsibilities** (including chief attorneys, directors, ACP administrators, managers, supervising attorneys).
- In total, **18 out of 53 (34.0%)** Statewide contracts include funding for Assigned Counsel Program **mentoring and resource attorneys**.

Highlights from the Counties

During the early stages of Statewide implementation, many counties have capitalized upon Statewide funding to hire new attorneys to reduce caseload, continue newly created positions,

¹⁴ Commentary to ILS ACP standard 4.2.b.

¹⁵ The term “hire” encompasses adding a new full or part-time supervisory position as well as increasing the hours of an already existing supervisory position.

and invest in a more diversified office structure that enhances supervision. These developments encompass an array of different priorities.

Several programs substantially increased their trial supervisory capacity. The Dutchess County Public Defender created two bureau chief positions to supervise criminal defense attorneys and upgraded two bureau chiefs to chief assistants. These two chief assistants will assist the Public Defender in the administration of the office, maintain responsibility for assigning and monitoring caseloads, conduct monthly and annual case reviews with subordinate staff, and assist in the development and implementation of department policies and procedures. A response to a question within ILS' recent Performance Measures survey reveals that the office's restructuring significantly improved supervision by reducing by half the number of attorneys per supervisor. (Performance Measures Report, Q. 10a). Similarly, the Warren County Public Defender created a full-time supervisory position, who will supervise attorneys and staff as well as coordinate and implement planned improvements in indigent legal representation, attorney development, and employee retention. The Orleans County Public Defender increased their part-time chief defender to a full-time, dedicated position to better oversee the office and staff. The office states that, "the funding is making a substantial difference in the overall quality of the representation being provided to individuals." (Performance Measures Report, Q. 10a). And the Niagara County Conflict Defender is in the process of creating an attorney supervisor position that will act as Second Chair for criminal trials, supervise other attorneys in criminal trial matters, and serve as a resource attorney for current staff attorneys. This position is integral as the office moves from a group of part-time attorneys to an office staffed by full-time public defenders. The Albany County Public Defender created a felony supervisor position because supervision of felony-level attorneys was previously overseen by the Chief Assistant Public Defender, who also carries a felony caseload and thus was unable to devote as much time and energy to her supervision duties. The Schenectady County Conflict Defender created a deputy chief position to provide supervision and mentoring of criminal defense attorneys. Both the Ulster County Public Defender and Delaware County Public Defender created chief assistant positions in order to supervise criminal defense attorneys. In New York City, both the Bronx Defenders and Brooklyn Defender Services added two supervising attorney positions.

Developments in supervisory capacity cover a broad spectrum of purposes. For instance, the Columbia County Public Defender created an appellate bureau chief position to handle the criminal appeals of the office and share in some of the supervisory responsibilities of the Public Defender. The Wayne County Public Defender upgraded its second assistant public defender to a supervisory position, responsible for supervising parole cases, justice court cases, and handling administrative duties for the Centralized Arraignment Part such as scheduling appearances and troubleshooting problems. All three defense providers in Monroe County have added unique supervisory positions. The Public Defender added a supervisory special assistant public defender to oversee diversity recruitment, cultural awareness training, and supervisory oversight of certain staff; the Conflict Defender added a supervisory first assistant conflict defender to help oversee the office and facilitate separating the assigned counsel program office from the Conflict Defender Office; and the ACP added a supervisory resource attorney who will coordinate with

the panel supervisors on the felony conflict plan that assigns overflow felony cases to panel attorneys to reduce Public Defender Office caseloads.

Several programs are significantly enhancing their supervisory capabilities. The Erie County Legal Aid Bureau (LAB) initially added a managing attorney for felony cases and has subsequently allocated funding to add a managing attorney to supervise misdemeanor cases. The LAB's creation of these positions underscores the importance of quality representation for both felonies and misdemeanors. While felony cases can appear more complex than misdemeanor cases and certainly carry the more serious potential consequence of state prison, a substantial majority of cases involve misdemeanors. Untold numbers of clients' lives are seriously affected—and sometimes ruined—by a seemingly “minor” misdemeanor arrest. Rick Jones, Executive Director of the Neighborhood Defender Services of Harlem has observed that:

a criminal conviction, even for a minor offense, has an enormous impact on a client's life. She may lose her housing, her job, her health or food benefits. It can impact the custody of her children. She may face deportation. No criminal conviction should be regarded as minor or unimportant. Misdemeanor convictions also have serious consequences.¹⁶

Thus, misdemeanor practice is as equally deserving of resources as other areas.¹⁷

In the assigned counsel context, the Erie County ACP has created multiple supervisory positions related to training, appeals, overall trial quality, and forensics. These attorneys work enthusiastically and seamlessly as a team to assist their county's large panel with all aspects of criminal defense representation. In Tompkins County, Statewide funding enabled the ACP to convert the supervising attorney's position from part-time to full-time, allowing him to fully concentrate on ensuring that panel attorneys are fully utilizing the supports and services needed to provide quality representation. Finally, the Franklin County ACP plans on adding funding for a part-time attorney supervisor, who will assist the administrator in determining conflicts, making case assignments, assisting in data collection, and providing legal consultation regarding administration of the program. This marks a significant change in the structure of the program which previously consisted solely of a non-attorney administrator.

II. Training and CLE's

Executive Law § 832 (4) (c) (i) (A) requires that attorneys receive effective training. The mandate set forth in the Executive Law is consistent with state and national standards. These standards directly emphasize the important role that training plays in achieving quality representation. For instance, the New York State Bar Association Standards for Providing

¹⁶ Boruchowitz, Brink, and Dimino, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts*, National Association of Criminal Defense Lawyers, at 13, April 2009.

¹⁷ See Roberts, Jenny, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 University of California Davis Law Review 277 (2011).

Mandated Representation (“NYSBA standards”) require that “[a]ll attorneys and staff who provide mandated representation shall be provided with entry-level and continuing legal education and training sufficient to ensure that their skills and knowledge of the substantive and procedural law and ethical rules relevant to the area of law in which they are or will be practicing are sufficient to enable them to provide quality representation.” The NYSBA standards also demand public funding to provide affordable Continuing Legal Education (CLE) programs for attorneys and require attorneys representing public defense clients to devote a significant portion of their mandatory continuing legal education credit toward courses directly related to the subject matter of the mandated representation they provide.¹⁸ Similarly, the American Bar Association Standards for the Criminal Defense Function (ABA standards) state that public defense offices should “develop and maintain programs of training and continuing education for both new and experienced defense counsel” and “require that current and aspiring criminal defense counsel attend a reasonable number of hours of such training and education.”¹⁹

The ABA standards reveal the comprehensive scope of necessary training. The standards explain that “a core training curriculum for criminal defense counsel should seek to address: investigation, negotiation and litigation skills; knowledge of the development, use, and testing of forensic evidence; available sentencing structures including non-conviction and non-imprisonment alternatives and collateral consequences; professional responsibility, civility, and a commitment to professionalism; relevant office, court, and prosecution policies and procedures and their proper application; appreciation of diversity and elimination of improper bias; and available technology and the ability to use it.”²⁰ ILS ACP standards also call for a broad training curriculum and require ACPs to “provide its panel with access to appropriate substantive, procedural, and practical training programs.”²¹ The ILS ACP standards further note that training programs should be “designed to ensure that panel attorneys can provide client-centered representation.”²²

The reform process requires that ILS include funding for training non-attorney professional support staff such as investigators and social workers, and for training leaders of public defense programs. The provision of training in these areas aligns with national standards. For example, the NAPD standards expressly state that, “the training and education provided by providers should extend to all lawyers, as well as investigators, mitigation specialists, social workers, administrators, and all others who support the defense function.”²³ Consequently, ILS encourages

¹⁸ NYSBA standards F-1, F-2, F-3. These standards are available at:

https://nysba.org/NYSBA/Committees/Committee%20on%20Mandated%20Representation/Resources/Pr oBono_Standards%20for%20Quality%20Mandated%20Rep_2019.pdf.

¹⁹ ABA standard 4.1-11 (a). The ABA Standards for the Criminal Defense Function are available at:

https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/.

²⁰ ABA standard 4.1-11 (b).

²¹ ILS ACP standard 4.2.d.

²² Commentary to ILS ACP standard 4.2.d.

²³ NAPD Principle 6: Training and Continuing Education are Essential for Providing Competent and Effective Defense Representation. See also ABA Standard 4.1-12 Training Programs (“A public criminal defense organization should also make available opportunities for training and continuing education programs outside the office, including training for non-attorney staff”).

Chief Defenders to utilize their training budgets to attend leadership, management, and diversity training as well as for specialized training for investigators, social workers, and other non-attorney support staff.

ILS encourages the use of funding for training on many different levels. First, programs may permit attorneys to attend traditional, high quality, lecture style, state and national programs like those offered by organizations such as the New York State Defenders Association, the New York State Association of Criminal Defense Lawyers, the New York State Bar Association, local bar associations, and the National Association of Criminal Defense Lawyers. These programs provide vital support for attorneys in keeping up with legal developments, and they introduce attorneys to subjects with which they may not possess familiarity. Funding can also support sending attorneys to trial skill development programs such as those offered by the Bronx Defenders, the Legal Aid Society of New York City, and the National Criminal Defense College. These programs develop and hone criminal defense attorneys' vital courtroom skills. In the ACP context, ILS has assisted counties with securing funding for Second Chair programs. This type of training is mandated by ILS' ACP standards.²⁴ The value of Second Chair programs cannot be overstated. As explained by the ACP standards:

Second-Chair Programs are an effective resource to enable panel attorneys to obtain the trial experience necessary to provide competent representation. The pairing of less experienced and more advanced attorneys may occur in a few distinct ways. For example, a new attorney may serve as second chair to a more seasoned assigned counsel whose client's case is going to trial. In addition, a panel attorney with some misdemeanor or low-level-felony trial experience who is assigned to a more complex case or who wishes to begin receiving such assignments, may gain necessary trial skills via a second-chair opportunity. Finally, Second-Chair Programs are critical when an experienced panel attorney is assigned to a case involving a serious charge or complex issues. In such instances, the primary attorney can receive needed assistance from the secondary attorney, who can learn invaluable lessons in such role.²⁵

ILS also encourages public defense providers to use funding to create unique state and local training opportunities in their own jurisdiction where in the past they lacked the resources to do so. The ability to recruit recognized experts to conduct training is particularly helpful because it addresses issues tailored to the specialized needs of attorneys who practice in that jurisdiction, reduces travel expenses thus allowing for wider local participation, and promotes camaraderie, particularly within assigned counsel programs. Finally, ILS provides resources for public defense providers to obtain a wide variety of necessary on-line and print legal research and reference materials, which attorneys can use on a more regular basis to complement formal training programs and cultivate their legal expertise.

²⁴ ILS ACP standard 4.2.e.

²⁵ Commentary to ILS ACP standard 4.2.e.

The Numbers

To achieve the goal of ongoing quality training, ILS has worked with the 52 counties and New York City to make funding available via the Statewide contracts, and as a result:

- **41 of the 53 Statewide contracts (77.4%) include funding for attorney trainings, conferences, and Continuing Legal Education courses (CLEs).**
- **Second chair programs are funded in 17 of the 53 (32.1%) Statewide contracts.**
- **32 of the 53 (60.4%) Statewide contracts include funding for legal reference materials (including Westlaw, Lexis, print publications, books, and subscriptions)**

Highlights from the Counties

Statewide implementation has significantly increased access to legal resources, continuing legal education courses, training conferences, and other resources. Schoharie County and Wayne County have each more than doubled their respective CLE/training budgets, ensuring that more attorneys and staff members can benefit from the educational resources necessary to provide excellent representation. The Schoharie County ACP Administrator shares that “[w]e have conducted a training of our own (with help from NYSDA). We also offered to use funding to reimburse attorneys to attend trainings for discovery and bail reform” (Performance Measures Report, Q. 10a).

ILS funding has supplemented limited county-funded training budgets and created completely new training budgets and opportunities including the ability of attorneys to attend programs that were previously unattainable. The Legal Aid Society of Westchester (LASW) provided funding for attorneys to attend local, regional, and national education programs. As expressed by LASW Executive Director Clare Degnan in her Statewide budget proposal, “[e]ducation is the cornerstone of understanding and improving representation of LASW clients. Understanding of an individual (trauma, addiction, age, history, etc..) coupled with an understanding the science of the case (ballistics, DNA, surveillance cameras, shot-spotters, intoxicizers, etc.) are critical to providing the best possible representation of a client whether the goal is a plea negotiation or trial.” The Madison County Public Defender states that “the funding assigned has allowed attorneys to attend more complex and specific, nationwide CLE programs, thereby providing them with a wider array of information to take back to their respective cases. Our office has sent a couple of attorneys to CLEs involving the defense of sex offenses, complicated evidentiary issues, and welfare fraud.” (Performance Measures Report, Q 10a). Similarly, the Putnam County Legal Aid Society plans to send five or six attorneys to a specialized “DWI Defense Institute,” an intensive 11 session course that results in the attorney being accredited in administration of field sobriety tests as well as possessing expertise in defending DWI cases. This training—which would have been cost-prohibitive prior to Statewide funding and is particularly relevant due to the high number of DWI cases the office handles—will equip these attorneys to understand and argue DWI cases from a more informed position, in addition to being able to share their knowledge with colleagues.

Counties are using Statewide funding to increase the types of professional development opportunities available. The Clinton County Public Defender added funds to cover the cost of attorney memberships in professional organizations, thereby granting attorneys access to resources like focused practice area listservs, motion banks, and educational articles. The Clinton County Public Defender also expanded its budget to cover travel costs for trainings. And the Montgomery County Public Defender created a budget line specifically for legal research, equipping the provider with the tools necessary to build persuasive, well-researched motions and arguments.

Counties have not only made funds available to cover the cost of attending CLEs and training conferences but have creatively utilized training resources. For instance, the Erie County ACP anticipates adding funds for materials to create and stock their forensic library, building on specialized forensic attorney and support staff hires. The forensic library budget will allow the Erie County ACP to purchase cutting-edge periodicals, books, and subscriptions for attorney use. Consequently, in addition to using state funding for a deputy attorney for CLEs position who has provided hundreds of hours of free CLE credits to panel attorneys and comprehensive memos on particular areas of law, Erie County ACP panel attorneys will now also have access to the educational tools that will ensure they are exceptionally prepared and equipped to handle cases with complex forensic issues. The Erie County ACP has created a state-of-the-art training room, complete with modern technology that enables the program to provide trial practice training in addition to traditional substantive lectures.

Even prior to Statewide funding, the Oneida County Public Defender's Office had partnered with its local bar association to create a well-recognized criminal law training program attended by attorneys throughout Central New York. The Oneida County Public Defender intends to build upon this program and increase its training budget by more than five times, with plans to create a dedicated training room for their attorneys. The office budgeted funds to purchase audio and visual equipment, both to view discovery and train attorneys in the use technology during trials. These training opportunities will ensure that attorneys can use technology to the best advantage of their clients, at a time when technology has become irreversibly interconnected with legal practice.

Counties have also expanded their in-office training structures. The Dutchess County Public Defender created a director of training position responsible for training all staff in the Criminal Defense Unit. In New York City, the Legal Aid Society has created two full-time criminal trial staff attorney trainer positions. These trainers rotate for an eighteen-month period into the training unit to contribute to the work of the unit by assisting the training supervising attorney with organizing, developing and conducting innovative and client-centered training programs and materials for attorneys and non-attorney staff. The New York County Defender Services created a full-time training supervisor position who is responsible for overseeing professional development training of the staff. The Westchester County ACP created a position for a consulting attorney to review briefs by assigned counsel appellate attorneys, brainstorm with assigned counsel at all stages of representation and provide technical assistance for the new e-filing requirements by the appellate courts. This will provide additional legal support for

assigned counsel in reviewing cases both before any disposition and appeals. The Albany County Public Defender created a full-time “Director of Training” position, which has been filled by a senior staff attorney with extensive trial experience. This attorney delivers individual and group presentations and one-on-one mentoring. The Albany County Public Defender is also planning to become certified in delivering CLE programs to prepare and present high-quality programs to its staff and others, including the Alternate Public Defender and the 18B assigned counsel attorneys. The Nassau County ACP has allocated Statewide funding to hire a training director, who will be responsible for establishing and implementing a training program for the panel attorneys.

Many counties have established or bolstered funding for Second Chair programs. As the Cortland County Public Defender explains, “we also had the opportunity to have an attorney second chair a trial to become felony-qualified. This would not have been possible previously because, previously, we could not afford to have two attorneys occupied with a trial with all of the other courts that needed to be covered.” (Performance Measures Report, Q. 8b). The Tompkins ACP concurs that “[s]econd chairs are important in that they provide important support to our experienced attorneys on cases, but in addition this program also allows us to train up younger attorneys by allowing them exposure to more complex cases by working or sitting as a second chair on cases they could not handle on their own, allowing them to build skills and ensuring quality of representation.” (Performance Measures Report, Q. 10a). The Dutchess County ACP created a Second Chair program to allow for more experienced attorneys to work, collaborate and/or co-counsel with assigned counsel on complex criminal defense cases subject to the approval of the assigned counsel administrator. The Madison County ACP also created a budget for Second Chair and mentoring to support a second attorney assisting with criminal trials and provide training opportunities for newer attorneys. The Orange County ACP created a Second Chair program budget in order to connect newly admitted and established attorneys with experienced attorneys to work, co-counsel, and collaborate on complex criminal defense cases subject to the approval of the ACP Administrator on a case by case basis.

III. Non-Attorney Professional Services

Executive Law § 832 (4) (c) (i) (B) mandates that attorneys must “have access to and appropriately utilize investigators, interpreters and expert witnesses on behalf of clients.” New York State Bar Association standards contain the same requirement stating that an “institutional provider of mandated representation shall provide counsel with the investigatory, expert (including social work), secretarial, interpretation and other support services and facilities necessary to provide quality legal representation”²⁶ ILS ACP standards similarly mandate that each “ACP shall ensure that individual assigned counsel have access to the non-attorney professional services needed at every phase of the case” and that the range of these services

²⁶ NYSBA standard H-1.

“shall include access to investigatory, expert, social work, mental health, interpreter, and other relevant services.”²⁷

Access to non-attorney professional services is critical for defense counsel to meet their “duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges.”²⁸ The ABA standards reveal the extremely broad scope of that duty:

Defense counsel’s investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client’s best interests, after consultation with the client. Defense counsel’s investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation. Counsel’s investigation should also include evaluation of the prosecution’s evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise.²⁹

In order to effectuate that duty, defense counsel is required to “determine whether the client’s interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.”³⁰

Whether a case is resolved by trial or a plea, the severe consequences of criminal convictions extend beyond incarceration. “Criminal convictions have systemic effects on legal rights. In many cases, collateral consequences, not fine or imprisonment, are the most significant consequences in criminal cases. What is at stake for many defendants facing criminal charges is not a long stretch in prison, but a lifetime with a criminal record. Accordingly, if attorneys want to help clients, they must think about collateral consequences.”³¹ The ILS ACP standards directly address this concern and require attorneys to determine and explain to clients “the collateral consequences of any course of action, and where appropriate, using the existence of these consequences to achieve better plea negotiations.”³²

²⁷ ILS ACP standard 8.5.

²⁸ ABA standard 4-4.1 (a).

²⁹ ABA standard 4-4.1 (c).

³⁰ ABA standard 4-4.1 (d).

³¹ Chin, Gabriel, *What Are Defense Lawyers For? Links between Collateral Consequences and the Criminal Process*, 45 Texas Tech Law Review 151 (2012).

³² ILS ACP standard 9.2.1.

Consequently, there is a compelling need for public defense programs to incorporate social workers and sentencing advocates into their representation of clients. Social workers assist counsel by addressing the myriad issues that may have contributed to their client’s involvement in the criminal justice system and by helping clients access needed educational, employment, family, mental health, or substance abuse services. Sentencing advocates work with attorneys to explore a client’s personal circumstances and develop mitigation reports. These reports provide courts with information necessary to impose a sentence that meets New York’s penological goals of rehabilitation, successful reintegration into the community, and incarceration only “when required in the interests of public protection.”³³

The systemic failure of public defense programs to provide these services directly implicates the Sixth Amendment Right to Counsel. In Hurrell-Harring v. State of New York,³⁴ New York’s Court of Appeals explained that “the period between arraignment and trial when a case must be factually developed and researched, decisions respecting Grand Jury testimony made, plea negotiations conducted, and pre-trial motions filed” is “critical for Sixth Amendment purposes.” The Court explicitly warned that “to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself.”³⁵ Consequently, in helping individual programs prepare their Statewide budgets, ILS pays careful attention to ensuring that every program has access to the vital services described above.

The Numbers

Given the importance of access to and use of non-attorney professionals, ILS has prioritized including funding in Statewide contracts for attorneys to retain these vital services and for defense providers to hire non-attorney support staff. As a result:

- **45 of the 53 Statewide contracts (84.9%) include funding to retain experts and other non-attorney professional services.**³⁶ Non-attorney professional services include an array of supports, including but not limited to investigative services, social workers, interpreters, and sentencing advocates/mitigation specialists.
- **45 of 53 (84.9%) Statewide contracts included funding for the hiring of non-attorneys who provide professional services.**

Highlights from the Counties

Several providers are utilizing funding to support evaluation and litigation of forensic issues. In New York City, the Legal Aid Society added two positions for digital forensics specialist attorneys, as well as a supervising attorney for their DNA Unit. These attorneys coordinate litigation strategies and provide forensic support to individual attorneys. The Erie County ACP has contracted with a forensic specialist who will help the ACP’s Forensic Deputy build a

³³ See Penal Law § 1.05(6).

³⁴ 15 N.Y. 3d 8 (2010)

³⁵ Id. (citing Maine v. Molton, 474 U.S. 159 [1985]).

³⁶ Attorneys often retain non-attorney professionals on their cases by contracting with them. Thus, these services are funded in the “contracted/consultant” section of ILS Statewide contract budgets.

forensic expert data bank and assist in the development of forensic training programs for panel attorneys. The forensic specialist has over two decades of previous experience working for the FBI on terrorism cases and is an expert in crime scene investigation and analysis. Similarly, the Broome County Public Defender's Office purchased cutting-edge mobile forensics software that will enable their investigators to access digital evidence from smartphones and tablets in a secure and trusted format. The Tompkins County ACP is also utilizing Statewide funding for access to this same technology.

Across New York, providers have used Statewide funds to establish or expand their attorneys' ability to access experienced social workers, either through direct hires or by developing budgets for attorneys to retain qualified professionals. For some, this is the first time they have had access to social workers and mitigation specialists. The Wyoming County Public Defender's Office hired a social worker, providing its staff with immediate access to a trained professional social worker able to coordinate the release of incarcerated clients in order to receive substance abuse and mental health treatment. The social worker also provides attorneys with weekly treatment progress reports, allowing staff to stay informed with their clients' progress and anticipate any potential difficulties. Similarly, the Oswego County ACP has initiated a contract position so that attorneys can easily access a trained social worker to assist in sentencing advocacy and appropriate program placement.

Other providers have built upon their existing resources to expand access to social workers and mitigation specialists. The Chautauqua County Public Defender created a caseworker position for its office. The Legal Aid Panel in Sullivan County created a dedicated budget for social workers to be hired on a per diem basis. In Dutchess County, the Public Defender's Office created a Supervising Alternatives to Incarceration (ATI) position responsible for overseeing ATI staff and interns as well as working to develop and implement policies within the Public Defender's Office and in coordination with other county agencies. The Erie County ACP has introduced social workers into initial arraignment courtrooms so that they can assist clients and their attorneys from the commencement of each case. In Tompkins County, the ACP significantly enhanced its budget line for social workers, experts, and investigators. And in New York City, Statewide funding is available for providers to bring additional social workers on staff to provide support to attorneys in developing effective mitigation strategies and advocating for alternatives to incarceration, along with helping clients connect with much needed services and treatment options. More specifically, the Bronx Defenders added two social worker positions, the Brooklyn Defender Services added seven social worker positions and a client advocate, and the Legal Aid Society added one social worker position.

Providers have also used Statewide funding to ensure that attorneys can quickly connect with trained and experienced investigators who can assist them in uncovering crucial evidence, locating and interviewing witnesses, and visiting incident locations. Some providers have hired in-house investigators so that attorneys can get an investigator involved at the earliest stages of a case. The Erie County ACP hired two full time investigators to ensure that attorneys can access investigation services for all their cases, and to allow the ACP to automatically assign an investigator to every case involving a complex felony charge.

IV. Effective Client Communication

Executive Law § 832 (4) (c) (i) (C) requires ILS to ensure that defense counsel provide effective client communication. Jonathan Rapping, founder and president of the nationally recognized public defense reform organization Gideon's Promise, has explained the critical, foundational importance of attorney-client communication:

It cannot be over emphasized that communication with a client is, in many respects, at the center of all services. This is how the lawyer begins to build a relationship with the client. A strong attorney-client relationship will help the lawyer foster a sense of loyalty and fidelity to the client and will allow the client to develop respect and trust for the advocate. Through this relationship, the lawyer learns the client's goals and objectives and provides him or her information needed to make informed decisions about the representation. Furthermore, without an understanding of the objectives of the representation, and access to information that perhaps only the client knows, the lawyer will not be able to fulfill his or her obligation to thoroughly prepare. In short, without "effective communication[], . . . the attorney[] cannot know, understand, or represent the clients goals."³⁷

NYSBA standards list five basic areas of necessary attorney-client communication, requiring an attorney to: "(a) communicate with his or her client on a regular basis during the course of representation, preferably in a private face-to-face discussion; (b) communicate with family or friends of the client, to the extent that the client waives the attorney-client privilege as to such communication; (c) inform the client on a regular basis of the progress of the case; (d) ensure that the client sees copies of all documents prepared or received by the attorney; and (e) provide the client with the opportunity to make an intelligent and well-informed decision in those instances when a decision is to be made by the client (i.e., whether to plead guilty, whether to be tried by a jury or judge and whether to testify)."³⁸

Effective client communication further demands that attorneys engage in client-centered representation. "Client-centered lawyering is premised on respect for the dignity and autonomy of each member of society."³⁹ It requires attorneys to consider their work from the client's perspective and provide the type of representation that they would want a family member to receive if they were swept up in the criminal justice system. The Client Advisory Board of the New York State Defender Association Client-Centered Representation Standards sets forth twenty essential principles of client-centered representation. These core principles encapsulate the expression of respect for the "dignity and autonomy of clients." For instance, the standards insist that overall a "client wants a lawyer" who "[r]epresents a person, not a case file; represents

³⁷ Rapping, Jonathan A., You Can't Build on Shaky Ground: Laying the Foundation for Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring, *Harvard Law and Policy Review*, Volume 3 (Spring 2009).

³⁸ NYSBA standard I-3.

³⁹ Freedman, Monroe H. (2011) "Client-Centered Lawyering – What it Isn't," *Hofstra Law Review*, Vol 40: Issue 2, Article 3

a client, not a defendant, and who “[l]istens to [clients] and represents them with compassion, dignity and respect.”⁴⁰

NYSDA’s client-centered representation standards include several that focus upon client communication. Specifically, the standards demand an attorney who (1) Makes sure the client’s privacy is respected and that communications take place in a space and by means that protect the confidential nature of the client-attorney relationship; (2) Meets with them and visits them when incarcerated, accepts phone calls, answers letters, and takes time to counsel and explain in a manner that communicates understanding and respect; (3) Uses language in court, legal writing, and conversation that is clear and understandable to the client; (4) Acknowledges personal cultural values, beliefs, and prejudices that might affect his or her ability to effectively represent a client and takes appropriate steps to shield the client from resulting harm; (5) Works and strategizes in collaboration with his or her client; and (6) Informs the client about plea negotiations, tells the client when a plea has been offered, explains the importance of the client’s decision whether or not to plead guilty, advises the client on the appropriateness of any plea and all of its consequences and, acting in the best interest of the client, helps the client reach an informed decision.⁴¹

ILS Appellate Standards and Best Practices also emphasize the necessity of robust attorney-client communication for attorneys representing clients on appeal. The standards require counsel to personally meet with the client in order to establish a relationship of trust and confidence. The commentary to this standard powerfully explains the reasoning behind this rule:

Personal visits are important for many reasons. Clients may be unable to read and understand counsel’s written communications, may be unable to form a trusting relationship with someone they have never met, may be unwilling to provide sensitive information by phone or letter, may be receiving bad advice, or may face circumstances that affect their decision-making and communication abilities. By visiting clients, counsel may learn far more from them and convey far more to them than otherwise would be possible. Although appellate briefs may not contain facts outside the record, gaining information through in-person meetings can be crucial to litigating post-judgment claims. For example, if counsel learns that a client has a history of mental illness and was suffering from such condition during the proceedings below, a motion to vacate the conviction may be viable.⁴²

⁴⁰ The Client Advisory Board of the New York State Defender Association Client-Centered Representation Standards, available at: <https://www.nysda.org/general/custom.asp?page=ClientAdvisory>.

⁴¹ *Id.* See also ILS ACP standard 9.2 (The ACP shall ensure that assigned counsel provide client-centered representation); NAPD Foundational Principle 8: Public Defense Representation Should Be Client Centered and Holistic (Client-centered representation should be practiced by public defense lawyers and other defense professionals in satisfying the constitutional right to counsel).

⁴² ILS Appellate Standards and Best Practices, Standard IX, Meeting with the Client. The standards are available here: <https://www.ils.ny.gov/content/appellate-standards>.

ILS implementation of quality improvement reforms support attorney client communication on a variety of fronts. First, the training and supervisory reforms described above, as well as ILS efforts to reduce caseloads, play a critical role in ensuring effective client communication by educating attorneys about the importance of client representation, providing supervision to monitor and assist with attorney-client communication, and reducing caseloads so that attorneys have the time to properly communicate with their clients. Second, as demonstrated below, ILS is also providing technological resources to attorneys that facilitate client communication. These resources include cell phone upgrades, text messaging programs, and website development. ILS also supports efforts to improve attorney access to phone and video conferencing in court and at local jails during the ongoing pandemic when communication by video or telephone is temporarily necessary. ILS expects that once the pandemic subsides, the constitutional, statutory, and professional rules that restrict the use of remote communication will return in full force and effect. ILS strongly maintains that technology can never provide an adequate substitute for in-person communication and that it should generally only be used for ministerial communications.

The Numbers

To achieve effective, consistent client communication, ILS has worked with the 52 counties and New York City to make available the tools that allow for and cultivate effective client communication. These tools include text messaging, phone communication, and in-person meetings. As a result, currently:

- **17 of the 53 (32.1%)** Statewide contracts include funding for **cell phone upgrades, text messaging programs, or website development**, with the aim of improving **client communication**.
- In total, **27 of the 53 (50.9%)** Statewide contracts include funding for **attorney mileage** which is used for, among other things, **client visitation**.

Highlights from the Counties

In our modern landscape of communication, the ability to connect with clients beyond the office is more important than ever. ILS' efforts to enhance access to communication technology embrace that reality. In Greene County, the Public Defender's Office utilized ILS funding for a text messaging service that allows attorneys to communicate with clients via text message and set automatic reminders for clients about upcoming appointments and court dates. The Wayne County Public Defender and the Monroe County Public Defender have similarly used Statewide funding for text communication and automatic texts to clients about scheduled court appearances. Tim Donaher, Monroe County's Chief Public Defender, recently told ILS that this text-messaging service has been an incredible asset to client communication. The Public Defender offices in Albany and Delaware counties have provided their attorneys with cellular phones and data plans so they can stay in touch with clients and colleagues when they are out of the office on an investigation or in court.

Programs have established or expanded their ability to compensate attorneys for expenses incurred for client communication for both appellate and trial-level cases. The Westchester

County Legal Aid Society Assigned Counsel Program established a travel fund that reimburses appellate attorneys for the travel and lodging expenses to visit their clients incarcerated in any of the fifty-plus prisons throughout New York. This use of funding comports with the ILS Appellate Standards and Best Practices described above. Similarly, the ACPs in Oneida, Schoharie, and Sullivan counties set up travel funds to encourage panel attorneys to conduct regular in-person meetings with their clients. In Warren County, the Public Defender’s Office set aside funds to assist clients with transportation expenses when meeting with their attorneys and the ACP created a budget to allow attorneys to accept collect calls from incarcerated clients.

A workplace that is easily accessible to clients and their family inevitably enhances effective client communication. The Chautauqua County Public Defender’s Office utilized funding to open two satellite offices in the northern and southern sections of their geographically large county. These offices allow assistant public defenders to maintain a presence at the two largest City Courts in the county, where a substantial portion of the office’s clients have cases. It also helps clients and family members who may not have the means to travel to the main office by allowing them to connect with attorneys, investigators, and eligibility examiners at the satellite offices.

Providing a quiet, professional space for attorneys to confer with clients at critical moments in their cases is an invaluable asset. In New York City, the Neighborhood Defender Services (NDS) has a main office which is approximately 30-45 minutes away from the downtown courts. Previously, they had a downtown satellite office near the courts, but it was too small to allow for client conferences. With Statewide funding, NDS relocated their downtown satellite office to a new location that was both closer to the courthouse and large enough for private work areas. Attorneys can now bring clients to satellite offices for conferences directly before or after court appearances, as well as during hearings and trials.

V. Attorney Qualifications and Experience

Pursuant to Executive Law § 832 (4) (c) (i) (D), ILS must ensure that attorneys possess the necessary qualifications and experience to provide quality representation. “The function of public defense requires highly developed professional skills and a variety of backgrounds, talents and experience.”⁴³ Public defense programs should, therefore “promote continuing professional development and continuity of service, while providing defenders the opportunity to gain experience in all aspects of the defense function.”⁴⁴ This foundational requirement of competence “is the best means of ensuring the proper operation of the constitutional safeguards designed to protect the innocent and the less culpable from unfair punishment.”⁴⁵

New York State and national standards adhere to this fundamental requirement. NYSBA’s Standards for Providing Mandated Representation state that public defense attorneys “shall have sufficient qualifications and experience to enable them to render quality representation to a client

⁴³ ABA standard 4-1.13 (c).

⁴⁴ *Id.*

⁴⁵ Ogletree, *The New Public Defender*.

in each particular case.”⁴⁶ Similarly, the American Bar Association Criminal Justice Standards for the Defense Function note that “[t]he government has an obligation to provide, and fully fund, services of qualified defense counsel for indigent criminal defendants.”⁴⁷

The NYSBA standards add that “[p]roviders of mandated representation shall never allow an attorney to accept a case if that attorney lacks the experience or training to handle it competently, unless the attorney is associated with another attorney on the case who does possess the necessary experience and training.”⁴⁸ New York State Rules of Professional Conduct reinforce that requirement stating that an attorney “shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.”⁴⁹

The above standards expressly apply in the context of assigned counsel programs. Executive Law § 832 (4) (c) (i) (E) mandates that ILS ensure that each ACP assign its attorneys to cases in a manner that accounts for the attorney’s level of experience. ILS’ ACP standards contain a clear requirement that the program “shall establish and maintain systems to ensure that assigned counsel have sufficient knowledge and experience to provide quality representation to clients.”⁵⁰ The standards further elaborate that the ACP “shall develop and maintain systems to (a) determine which levels of cases are appropriate for each attorney; (b) recertify panel attorneys; and (c) identify the training needs of panel attorneys.”⁵¹ These standards all reinforce the central principle that every public defense client must receive an appropriately experienced, qualified counsel.

The need for proper attorney qualifications and experience is particularly acute in cases that involve forensic issues. Litigation of forensic issues in criminal cases is a highly complex and challenging enterprise, featuring continuously evolving science and technology. Moreover, the consequences of poorly addressed forensic issues are unquestionably severe. “Unreliable forensic evidence is one of the major causes of wrongful convictions. The Innocence Project reports that “misapplication of forensic science is the second most common contributing factor to wrongful convictions, found in nearly half (45%) of DNA exoneration cases.”⁵² Attorneys assigned to cases that present forensic issues must, therefore, possess highly specialized knowledge and skills including the ability to understand scientific principles and methods, review scientific documents and records, select and work with expert witnesses, and translate that knowledge into persuasive legal writing and trial advocacy that can successfully challenge the admissibility, accuracy, and conclusions of proffered scientific evidence.

⁴⁶ NYSBA standard E-1.

⁴⁷ ABA standard 4-2.1 (a). See also New York State Rules of Professional Conduct 1.1 (a) (“[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”)

⁴⁸ NYSBA standard E-1

⁴⁹ New York State Rules of Professional Conduct 1.1. (b).

⁵⁰ ILS ACP standard 10.1

⁵¹ ILS ACP standard 10.2.

⁵² New York State Bar Association, Report of Task Force on Wrongful Convictions, Subcommittee on Forensic Practice (February 8, 2019).

Ensuring that public defense attorneys possess the necessary qualifications and experience creates a corollary duty to recruit and retain a diverse and experienced staff. ABA standards specifically state that “[e]ffective measures to retain excellent defenders should be encouraged” and that a public defense office should “consider the diverse interests and makeup of the community it serves, and seek to recruit, hire, promote and retain a diverse group of defenders and staff that reflect that community.”⁵³

The ability of a public defense program to retain experienced staff depends, in significant part, upon fair and competitive salaries. The ABA standards explain that “[c]ompensation and benefits for public defense counsel and their staffs should be commensurate with the high responsibilities of the office, sufficient to compete with the private sector, and regularly adjusted to attract and retain well-qualified personnel. Compensation for public defense counsel should be adequate and also comparable to that of prosecutors in the same jurisdiction.”⁵⁴

ILS continues to work to enhance attorney qualifications through a variety of means. For instance, as demanded by the above-referenced standards, ILS funding often includes salary enhancements that allow providers to hire and retain qualified attorneys. ILS also provides numerous opportunities for attorneys within public defense organizations to join a variety of well-recognized state and national criminal defense organizations such as the New York State Defenders Association, the Chief Defenders Association of New York, the New York State Association of Criminal Defense Lawyers, the National Association of Criminal Defense Lawyers, and the National Association of Public Defenders. Additionally, the supervision and training reforms discussed above play a vital role in securing the presence of qualified counsel for all clients. ILS is also actively working to enhance the forensic qualifications of public defense attorneys and is highly supportive of the development and expansion of forensic practice units within offices. ILS has recently created a Forensic Practice Work Group that will facilitate communication between developing forensic units and link their expertise to smaller programs that may not yet have the resources to create their own units. Finally, the development of structured and well managed assigned counsel programs that is discussed below form an integral part of ILS implementation of reforms in this context.

The Numbers

As a result of the above strategies to build the structures for attorney certification and qualifications, to date:

- **28 of the 53 Statewide contracts (52.8%)** include funding for **attorney salary enhancements** for parity and/or retention.⁵⁵

⁵³ ABA standard 4-1.13 (a) and (b).

⁵⁴ ABA standard 4-1.13 (d).

⁵⁵ Notably, these numbers reflect funding that enhances salaries solely for the purpose of hiring and retaining experienced and qualified attorneys. These numbers are not duplicative of the numbers in Section I, which are numbers to hire attorneys with supervisory responsibilities and include supervisory attorneys who received a salary enhancement because of increased hours.

- **Attorney licenses and professional membership dues** are funded in **19 of the 53 (35.8%)** Statewide contracts.
- **15 of the 53 (28.3%)** Statewide contracts include funding for **contracted attorneys who provide specialized services.**
- **22 of the 53 (41.5%)** Statewide contracts include funding for **ACP Administrator positions to monitor attorney qualifications and experience and ensure that attorneys have the skills and experience needed for the cases to which they are assigned.**

Highlights from the Counties

Statewide funding is being used to greatly improve the ability of public defense providers to recruit and retain experienced staff. For example, the Albany County Public Defender Office addressed historically low entry-level salaries and formalized a salary schedule for attorneys with one to six years of experience. In 2016, starting salaries at the Public Defender Office were \$42,170, with only two designated salary levels in the budget and little uniformity in compensation across the schedule. Public Defender Stephen Herrick reports that prior to Statewide funding, the office was down by five felony level attorneys and unable to fill those positions (even with less experienced attorneys). He identified the reason for this attrition as his office's inability to compete financially with either the public or private sector. With Statewide funding, the office now has a starting salary of \$66,300 and a six-step salary schedule that is competitive and provides a "career ladder" for attorneys with a commitment to public criminal defense. Stephen Herrick reports having a "solid core of bright, motivated, hardworking attorneys," who he hopes will "make public defense a career, not just a first job."

In Chenango County, Statewide funding enabled the Public Defender Office to increase salaries and thereby improve retention of attorneys. The Public Defender reports that the county has a dearth of attorneys in general and experiences great difficulty in recruiting attorneys to rural Central New York. The office recently lost its two most experienced attorneys and was at risk of losing a third due to inadequate compensation. Indeed, an assistant public defender with twenty years of experience was receiving the same salary as a new hire. In order to keep and attract qualified attorneys, the office adjusted salaries to more fairly compensate three of the most experienced attorneys for their positions and experience levels.

In Orange County, the Legal Aid Society (LAS) used Statewide funding to provide raises between three to thirteen percent for the attorneys. Prior to the availability of this funding, LAS's Executive Director reported that the attorneys in his office were underpaid and that, once vacated, positions were exceedingly difficult to fill. Having augmented salary levels, the office is now able to recruit competitively and was recently able to quickly fill three vacancies when one attorney retired and two moved away from the area. The Ulster County Public Defender similarly used Statewide funding to provide salary increases of approximately three percent for

six to seven attorneys in their office. These increases equalized staff salaries among attorneys at the same experience level.

VI. Assigned Counsel Program Quality Improvement

The development of ACPs throughout New York State is an integral and vital component of statewide public defense reform. ACPs exist in every county of New York State and the criminal justice system cannot function without their contribution. New York’s bleak history of underfunded and unmanaged ACPs stand as a stark testament to the tragic fruits borne of their initial neglect. In April 2009, the New York State Bar Association’s Wrongful Conviction Task Force (WCTF) released its first comprehensive report studying the root causes of wrongful convictions in New York. The report revealed that poor defense practices were among the major contributors to wrongful convictions. The Defense Practices subcommittee of the WCTF found that attorney failures leading to wrongful convictions “fall into two principal categories: inadequate pretrial investigation and preparation, and incompetence in the conduct of the trial.”⁵⁶ The subcommittee further found that these errors “predominate” in assigned counsel programs and issued a searing indictment of the lack of structure within New York’s assigned counsel system:

There is an existing issue in New York as to whether there is, in fact, any type of quality control as to the qualifications and performance of non-public defender assigned counsel. There is ample basis for concluding that current assigned counsel plans do not have such controls in place: this may be due both to a lack of due diligence by assigned counsel administrators in the initial appointment of private attorneys or in the lack of assessment in performance of assigned counsel with regard to retention on an 18-b panel. Even if the current assigned counsel plans throughout the state appointed qualified counsel or purged incompetent counsel, there exists no mechanism for ensuring that retained counsel will provide quality representation, and there also appears to be a lack of support and resources within these plans, both in terms of legal oversight and consultation as well as investigative and case preparation services.⁵⁷

This manifestly unconstitutional history requires New York to remain vigilant in its ACP reform efforts. Fortunately, ILS has taken several major steps toward ensuring quality representation of public defense clients by ACPs. These interconnected reform efforts center around the creation and development of structured and well-managed ACPs.

First, in July 2019, ILS issued ground-breaking Standards for Establishing and Administering Assigned Counsel Programs in New York. These standards “set out the structure and

⁵⁶ Final Report of the New York State Bar Association's Task Force on Wrongful Convictions, Defense Practices Subcommittee Report and Final Proposals at 121 (April 2009) <https://nysba.org/NYSBA/Practice%20Resources/Substantive%20Reports/PDF/FinalWrongfulConvictionsReport.pdf>.

⁵⁷ *Id.* at 122.

components of ACPs necessary to ensure quality representation.”⁵⁸ They are “designed to guide ACPs to ensure that attorneys can comply with relevant performance standards in providing mandated representation.”⁵⁹ They also provide a practical and detailed roadmap for the creation and development of an outstanding program. For instance, the standards describe the required ACP administrative structure, define the role that the ACP should play in their local criminal justice system, list the categories of resources that the ACP should provide to attorneys, and set clear expectations as to the quality of representation that ACP panel attorneys must provide. The overarching goal of these standards is to promote implementation of well-managed and high functioning ACPs that provide the same level of attorney and client support as occurs in the best public defender and Legal Aid Society offices.

Second, the ACP reforms instituted in the initial five counties of the *Hurrell-Harring* settlement (HH counties) helped shape the creation of the ILS ACP standards. As the ACP standards reveal, the programs developed in the HH counties, “offer models regarding how these Standards can guide counties in developing or improving ACPs that promote high-quality representation.”⁶⁰ These newly created model programs provide living proof that the type of structures contemplated by the standards can be created and successfully implemented.

Third, as both this Quality Improvement Report and last year’s report demonstrate, the process of converting ACPs from unstructured, unmanaged programs that fail clients into programs that can stand with the best public defense offices is well underway. The overall transformation in the initial stages of reform implementation has been nothing less than remarkable. ILS will continue to work with counties and providers to strengthen assigned counsel programs with the goal of creating a statewide network of ACPs that serve as national models.

The Numbers

To build independent ACPs and bolster existing programs, ILS has worked closely with the counties and New York City to better fund ACP infrastructures. Below we identify the programs and structures funded in the Statewide contracts specifically for ACPs. Some of these numbers duplicate those in previous sections. We highlight them here, however, because development of strong, well-resourced ACPs is vital to ensuring that every person charged with a crime receives quality representation.

To ensure that Statewide funding is used to build strong ACPs, currently:

- **25 of the 53 (47.2%)** Statewide contracts include funding for **hiring ACP Administrators and/or supervising attorneys.**
- **18 of the 53 (34.0%)** Statewide contracts include funding for **ACP mentoring and resource attorneys.**

⁵⁸ ILS ACP standard 1.3 Purpose.

⁵⁹ ILS ACP standard 1.2 Scope.

⁶⁰ Commentary to ILS ACP standard 1.3.

- **Training, professional conferences, and Continuing Legal Education (CLE) resources for ACP attorneys** are funded in **32 of the 53 (60.4%)** Statewide contracts.
- **17 of the 53 (32.1%)** Statewide contracts include funding for **ACP second chair programs**.
- **Legal reference materials for ACPs** are funded in **19 of the 53 (35.8%)** Statewide contracts.
- **37 of the 53 (69.8%)** Statewide contracts include funding for ACP panel attorneys to **retain non-attorney professional services (investigators, social workers, interpreters, sentencing advocates, etc.)**
- **Hired non-attorney professionals for ACPs** are funded in **21 of the 53 (39.6%)** Statewide contracts.
- **8 of the 53 (15.1%)** Statewide contracts include funding for **office space for ACPs**.

Highlights from the Counties

ILS Statewide funding has dramatically augmented the quantity and quality of ACP administrative structures throughout New York State. Prior to 2017, only 23 counties and NYC had administrators in place. In the remaining 29 counties, the ACP either completely lacked an administrator for the program or the ACP was administered by an office with a blatant conflict of interest such as a County Attorney's office or Public Defender, Conflict Defender, or Legal Aid Society office. Moreover, even in the 23 counties that employed independent administrators, their administrative role was often strictly limited to pro forma voucher review. Very few counties provided dedicated budgets for supervision, training, investigation, expert witnesses, social work/sentencing advocacy, quality control, or second chair and mentoring programs. With Statewide implementation, 41 counties and NYC now have the benefit of independent administrators, and all counties are developing enhanced structure and resources for their assigned counsel attorneys.

Using Statewide funding, counties that already contracted with or employed part-time administrators have increased the hours, responsibilities and compensation for these positions. In these counties, administrators who previously devoted between five and fifteen hours per week to limited duties are, in many cases, restructuring their careers and private practices in order to develop programs in accordance with ILS standards.

In Oswego County, where all mandated representation is provided through assigned counsel, Administrator Sara Davis's position expanded from eight to twenty hours per week and she is now overseeing a part-time assistant attorney and part-time social worker. She is also administering new budgets for litigation support, expert services, and attorney travel. In Cayuga County, also solely served by assigned counsel, Administrator Lloyd Hoskins's position was similarly augmented from five hours per week to full-time at thirty-five hours per week. Mr. Hoskins now manages an upgraded full-time deputy administrator who was previously a five hour per week position and is developing mentoring and second-chair programs. Tioga County's

ACP Administrator, Irene Graven, historically spent six to ten hours per week on voucher review as her sole responsibility. With Statewide funding, Ms. Graven's position has increased to seventeen hours per week, enabling her to undertake the additional responsibilities of implementing ILS ACP standards and coordinating training and recruitment.

Prior to Statewide funding, Herkimer County contracted with a private attorney, Keith Bowers, on a limited basis to administer its program. Mr. Bowers' contract has been significantly augmented with expanded duties, and he is in the process of developing mentoring and Second Chair programs. Mr. Bowers is also actively planning the creation of a resource center for panel attorneys to have a physical space to work and meet with clients and experts. Orange County similarly contracted with a private attorney, James Monroe, to administer its program. His role was enhanced beyond voucher review to include twenty hours per week to monitor and improve the ACP. Mr. Monroe is developing mentoring and Second Chair programs for the panel of approximately one hundred attorneys, and he now administers a dedicated budget for non-attorney professional services.

In New York City, the ACP received funding for major upgrades and expansion of both staff and resources. The program now has funding for thirteen new positions: four supervising attorney positions, a senior research associate, two program assistants, a DNA director, a CLE training director, adolescent coordinator, mental hygiene director, social worker director, and receptionist. It also developed significant budgets lines for non-attorney professional services and operational expenses.

Many counties that previously administered their programs through an institutional defender or the County Attorney's Office have now created part-time or full-time administrator positions to develop independent assigned counsel programs. After budgeting for these new positions using Statewide funds, these counties began the complex process of planning and building new, independent programs. In some counties, this involves locating and renting office space, purchasing office furniture and equipment, and hiring staff. In others, county governments are negotiating regionalization agreements with neighboring counties to administer their program.

Sullivan County, which did not previously have an assigned counsel administrator, budgeted for and hired a full-time Administrator, Lynda Levine, who is in the process of developing the program in accordance with ILS Standards. In Fulton County, where the ACP had previously been administered by the Public Defender's Office, the county created and subsequently filled a part time administrator position. Michael Smrtic, the Fulton County ACP Administrator, is in the process of creating an attorney resource room that will have office equipment and legal research resources; he also administers newly created budgets for training and memberships/dues. Broome County and Chautauqua County have created positions and budgets for independent assigned counsel programs, and are in the early, crucial stage of program development in consultation with ILS. Columbia County, which previously had no formal program, has initiated a position for an ACP Administrator. Madison County, which historically administered its ACP through the County Attorney's Office, has now budgeted for a regional

administrator contract and an in-county attorney position, as well as training, second chair and expert witness budgets.

In counties where the administration of ACP's is still structured through a county attorney, comptroller or institutional provider office, Statewide funding is forming the scaffolding that will support the buildout of independent programs. Each county that fits into this category has its own unique hurdles to overcome in the creation of independent programs. In these situations, ILS Standards prove especially crucial in setting guidelines for program development.

In Dutchess County, which previously lacked a formal program, the county established and filled an assigned counsel administrator position using Statewide funding. This position is currently maintained within the Public Defender's Office but is progressing toward establishing its independence. The new Administrator, Tom O'Neill, is drafting an ACP plan and handbook, launching a Second Chair program, and administering funds for experts, transcriptions, and professional association memberships for panel attorneys.

In Niagara County, where the ACP is administered by the Conflict Defender, the county has created a separate budget for non-attorney specialized services and a case management system, laying the groundwork to separate the ACP from the Conflict Defender Office. In Chenango County, the ACP was formerly administered by the Public Defender Office and is now moving into its own office space. The ACP in Westchester County, although still contained within the Legal Aid Society, has implemented and continued to develop an Assigned Counsel Resource Center that features staff investigators, a social worker, a supervising attorney, and a mentoring program. The county is currently drafting legislation to create an independent ACP and utilize Statewide funding to support its services.

To support these significant developments at their different stages and encourage administrators in their roles as organizational leaders, ILS organized a Summit of ACP administrators on July 24, 2020. This meeting was attended (virtually) by approximately forty-seven individuals involved with ACP development in their respective counties, including ACP leaders from the *Hurrell-Harring* settlement counties. The Summit provided an opportunity for these new administrators to discuss their challenges and experiences with the well-established HH county leaders. It resulted in a robust discussion that raised some fundamental questions regarding ACP development, such as how to achieve independence, and how to gain credibility with panel attorneys. It also provided an opportunity for administrators to compare notes on the challenges of representation during the COVID-19 pandemic. These meetings will continue as a regular convening of ACP leaders, with future meeting topics guided by the ILS ACP standards: the creation of ACP Plan/Handbook, assignment of cases, strategies to encourage use of resources, and the creation and effective administration of mentoring and second chair programs. ILS has also created a listserv in order to facilitate communication among administrators. This listserv will become a forum for ACP administrators and their staff to discuss organizational best practices, protocols and policies, post questions, make announcements, share insights and strategies, and to seek feedback and assistance from this community. Ultimately, the goal of the listserv is to provide a venue for assigned counsel administrators across New York State to

support each other and work together to improve the quality of representation and of practice under County Law 18-B.

And finally, the ILS ACP standards recognize that “County plans are generally strongest when they also include the services of a full-time public defender organization.”⁶¹ The ACP standards explain that:

Fully funded institutional providers can develop special expertise in public defense cases; provide client-centered representation by including investigators, social workers, and other necessary professionals on staff; and advocate for improvements in the criminal defense and family law systems. Nationally, all major urban jurisdictions include an institutional public defense provider, as do the vast majority of counties in New York State.⁶²

In keeping with this principle, three counties, Clinton, Delaware, and Hamilton, have all utilized Statewide funding to move away from their provision of public defense services solely through an assigned counsel system. The three counties have all established Public Defender Offices and utilized Statewide funding to transform their ability to provide quality representation by recruiting experienced attorneys to staff the offices and by taking advantage of the quality improvement resources detailed in this report.

VII. Data Reporting Infrastructure

In its 2006 Final Report, the Kaye Commission took note of the lack of consistent data regarding the delivery of indigent defense services in New York, stating as follows:

There is no comprehensive system of data collection designed to provide accurate statistics regarding the provision of indigent criminal defense services in New York. The absence of such a system significantly hampers the ability of policy makers and administrators to make informed judgments and plan meaningful improvements in the administration of indigent defense services.⁶³

Not surprisingly, the Kaye Commission recommended the establishment and maintenance of a “comprehensive data collection system designed to provide an accurate picture of the provision of indigent defense services in New York.”⁶⁴

While Executive Law § 832 (4) (c) does not identify data reporting as a quality indicator, as the Kaye Commission makes clear, the capacity to collect, maintain, and report data is a necessary quality improvement endeavor. Data is critical to measuring and monitoring the quality of defense and allows program leaders and policymakers to make informed decisions about programs and policy. It is also vital to complying with the reporting requirements set forth in the Statewide contracts and specified in County Law § 722-e.

⁶¹ Commentary to ILS ACP standard 2.1.

⁶² *Id.*

⁶³ See Kaye Commission Report, at 25.

⁶⁴ *Id.* at 33.

A sound data reporting infrastructure includes the consistent documenting of individual case information – including information on quality indicators such as the use of experts, investigators, and other non-attorney professionals – as well as the ability to easily retrieve and update this information. An electronic case management system fulfills this basic need. It makes it possible to track case progress and outcomes at the individual level and, more broadly, to track the improvement of quality indicators over time. Additionally, to obtain and maintain access to data which allow reliable statements on the quality of mandated criminal defense, close collaboration between ILS and the counties is vital. To facilitate and solidify this collaboration, a state-funded Data Officer is designated in each county. The Data Officer is expected to work closely with ILS, each provider, and the county to collect and report reliable data to ILS in a timely and efficient manner.

To achieve the above goals currently:

- **32 of the 53 (60.4%)** Statewide contracts include funding for the acquisition, updating or expansion of an **electronic case management system**.
- In total, **39 of the 53 (73.6%)** Statewide contracts include funding for a **designated ILS Data Officer**.

Highlights from the Counties

In many counties, providers have chosen to use Statewide funding for crucial upgrades to outdated and inefficient electronic case management and vouchering systems. Information about cases and assignments have often been maintained on paper vouchers or in an Excel spreadsheet, making it difficult (if not impossible) for counties to track case progress and outcomes and comply with the new and expanded mandatory data reporting requirements of the ILS-195 form.

The process of implementing new case management systems generally involves identifying an appropriate product in the marketplace, developing a system that meets the county's needs and satisfies annual data reporting requirements and contractual performance measures, and finally implementing the new system, training staff and stakeholders on new procedures and migrating historical information.

In Cortland County, the ACP already used the New York State Defender Association's Public Defense Case Management System (PDCMS) to track cases prior to 2018 but was using an inefficient paper system for vouchering. The multi-step Cortland County voucher approval process was typical of that used in many counties: after the close of a case, the panel attorney would submit a voucher to the ACP Administrator for review. The Administrator would then send it to the Court for approval. Once approved by the Court, the voucher would come back to the ACP Administrator, who would then process it and send this paperwork to the County Treasurer Office. The Treasurer Office would finally generate an invoice, which would be sent back to the ACP Administrator for approval. The Cortland County ACP is now in the process of implementing an electronic vouchering system which will dramatically improve and streamline the approval process and shorten the time from voucher submission to payment.

In Allegany County, the Public Defender Office used Statewide funding to upgrade to PDCMS, and the ACP plans to purchase and implement an electronic vouchering and case management system. Both programs historically used Excel to maintain case data; these upgrades will enable far more accurate, efficient case tracking, data reporting and voucher review. Other providers for which the budget includes funding for case management system upgrades include the Public Defender Offices in Chenango and Rockland Counties.

In Madison County, the ACP similarly upgraded from Excel to PDCMS in order to manage its case data. In Orange County, the Assigned Counsel Program is in the process of developing and upgrading an electronic vouchering system capable of tracking cases in accordance with the ILS-195 annual report, and the software developer has been working closely with ILS' Research Team in order to ensure all data reporting requirements are met when the new system is rolled out.

In Schoharie County, the ACP historically used Microsoft Word to track cases and data. Statewide funding enabled them to purchase a new case management system that is not only web-based, mobile responsive (allowing users to access the system on a variety of devices), and customizable to county-specific needs, but also collects arraignment, case, and disposition data. The program additionally translates cases into the seven case types as established by ILS, allowing the Schoharie County ACP to manage panel attorney caseloads and to meet the annual ILS-195 data reporting requirements.

In Warren County, the ACP had been using a custom database to track cases. Statewide funding allowed the program to invest in a more advanced case management program for more robust data collection and reporting. In contrast, the Albany County ACP has not historically used a computer system to track cases. State funding has been allocated for the acquisition of the software needed in order to comply with state data reporting requirements.

Overall, the described implementation and upgrades of the electronic case management systems used by institutional providers and ACP programs throughout New York State significantly improves the data reporting infrastructure. It makes the process of collecting reliable data and tracking the improvement of the quality of mandated criminal defense statewide much more efficient. To illustrate, 100% of providers of mandated criminal defense were compliant with the ILS-195 reporting requirement this year as well as close to 95% of counties for the April 2020 Performance Measures Progress Report. Although a 95% compliance rate is impressive given the global COVID-19 pandemic with its epicenter in New York, ILS will adopt strategies to ensure full compliance for the next reporting period.

Another initiative that contributes to an improved data reporting infrastructure and is typically found in the larger localities such as New York City, is using statewide funding to hire Data Quality Analysts (Legal Aid Society) and Managing Data Attorneys (New York County Defender Services). Analysts are responsible for the tracking, synthesis, and analysis of caseload data, and the Managing Data Attorney is responsible for overseeing this process and working closely with supervisors and staff to ensure that standards enhancing quality representation of clients are met.

VIII. Enhanced Professionalism, Efficiency, and the Capacity to Effectively Use Discovery

Virtually every county has used Statewide funding for the tools needed to enhance office professionalism and efficiency. Examples of this include the following: office supplies, furniture, and filing cabinets; computers and smart devices; copiers, printers, and scanners; phones; trial equipment, such as projectors and screens; internet connectivity and data plans; on-site servers and enhanced cloud access for data storage; and IT support.

As with data collection, enhanced professionalism and efficiency are not identified in Executive Law § 832 (4) (c) as quality indicators. Still, there is no question that use of state funding for the tools needed to increase office professionalism and efficiency enhances the quality of representation. Below are just some of the quality improvements that are being realized by access to these tools:

- *Increased efficiency.* Having necessary supplies and technology makes it possible to organize (electronically and in hard copy) the vast amount of information associated with handling criminal cases. Better organization allows staff to access information readily and increases their ability to fully analyze all the facts and law for each case.
- *Professional office environment.* Up-to-date technology and well-maintained office furniture and equipment contributes to a professional office environment, elevating the professionalism of the services delivered. Clients are more likely to trust that they are receiving quality representation if their attorney is adequately resourced and works in a professional law office.
- *Staff retention.* Staff are more likely to remain at organizations with professional work environments and that ensure them ready access to the basic tools needed for quality representation, including supplies, decent furniture, and up-to-date technology. Good retention translates to high quality, experienced staff and to more time spent on direct representation rather than recruiting, interviewing, and training new staff.

The use of Statewide funding for supplies and technology has also allowed criminal defense providers to process the extraordinary amount of electronic and digital discovery they are now receiving pursuant to New York's new discovery laws. Specifically, in January 2020, legislation took effect which significantly expanded the prosecution's duty to disclose discoverable information to defense counsel, early in the case.⁶⁵ Such information includes police body-camera footage, retail and street camera videos, digitized 911 calls, witness statements, and scientific tests and examinations. In many counties, the prosecution has disclosed this information in electronic format. This has required public defense providers to develop the capacity and protocols needed to accept large amounts of digital information, store it, review it, and analyze it. To do so, providers have used Statewide funding to purchase technology, including computers, printers, servers, cloud storage, and necessary software. Providers have also used funding to train attorneys, investigators, and other staff on how to effectively use the technology to store, download, review, and organize the discovery they receive in criminal cases.

⁶⁵ See Criminal Procedure Law Article 245.

In some instances, providers have entered agreements with other defense providers to share the costs of this technology, which can be expensive.

Having access to discovery will not promote just and fair outcomes if defense attorneys are unable to store, analyze, and manage the information to make effective use of it. Defense providers have reported to ILS that Statewide funding has been critical to their ability to effectively use the information they receive, particularly in cases involving voluminous discovery material.

Many counties have prioritized the use of Statewide funding to address the dramatic increase of material provided to the defense under the new discovery legislation. Some programs have sought to increase staffing to support the management of the information flow. That staffing takes a variety of forms. Several offices have determined that augmenting their investigation budget lines provides the best means to approach the problem. The Cortland County Public Defender budgeted for two part-time investigators to assist with discovery review and the Chemung County Public Defender plans on using Statewide funding to upgrade a part-time investigator to full-time, with the express purpose of increasing the investigator's responsibilities to include collecting and reviewing discovery as well as discussing the discovery with the assigned attorney. Other programs have focused upon increasing hours for their attorneys. The Wayne County Public Defender increased the salaries of four assistant public defenders and the Wyoming County Public Defender increased the hours of three assistant public defenders. And third, counties have increased their office support staff. The Wyoming County Public Defender also added two secretaries to account for the increase in reviewing and digesting the expanded discovery that attorneys are receiving. The Erie County Legal Aid Bureau created three new discovery paralegals who are responsible for the receipt of physical as well as electronic discovery, logging receipt of same and communicating with attorneys regarding the discovery, as well as the status of the People's readiness. These positions will also distribute the discovery to the attorneys and track the prosecution's continuing obligations to provide discovery as well as the attorneys' reciprocal discovery obligations. Similarly, the Monroe County Public Defender Office created three new office clerks to assist attorneys with obtaining discovery, storing it in the office case management system, and providing a copy to the attorney and/or client if needed. The Niagara County Conflict Defender created a confidential secretary who will be responsible for aiding panel attorneys by printing, organizing, and distributing discovery material, in addition to other duties. And the Orleans County Public Defender established a full-time office assistant to work directly with the part-time assistant public defenders to process and review the discovery they receive.

Offices are also adding specialized new positions to handle the added volume of digital information. The Erie County ACP created a new digital evidence and document specialist, a contract position that will facilitate discovery access for panel attorneys, such as opening documents, viewing videos, and communicating with the assigned attorney regarding the information. The Monroe County Public Defender added a full-time digital media technician position to assist attorneys in processing, viewing, and storing digital video footage.

The influx of digital discovery has also created new issues of storage and access in offices. While staff are necessary to retrieve, review, and manage the discovery for use in a client's case, offices must also have adequate IT infrastructure to store the information and ensure easy access. Essex County plans on using Statewide funding for a new blade server, computers, and equipment to enable the defense attorney to handle the abundance of data from the new discovery laws. The Oneida County Public Defender has the goal of funding a larger TV and other audio/visual equipment for its attorneys to view videos and other digital evidence received through the discovery process. The Wayne County Public Defender has budgeted a variety of IT facets in response to the surge of discovery materials. In addition to digital storage equipment like hard drives, the office has contracted with a company to store and enable access to body camera footage, interrogation videos, and dashcams. This will save the office time on downloads by retaining the information in a secure cloud location, as well as save money long term on necessary storage space. Additionally, the Public Defender added funding for extra case management licenses: discovery files are stored in the case management system to ensure access at any computer (including remote access) and consequently an increased number of staff will be accessing the database simultaneously.

Conclusion

In 2006, the Commission on the Future of Indigent Defense Services issued its Final Report to the Chief Judge of the State of New York State. The Commission found that the “the crisis in the delivery of defense services to the indigent throughout New York State” was “attributable to a lack of an independent statewide oversight mechanism that can set standards and ensure accountability in the provision of indigent criminal defense services and to a grievous lack of adequate funding by the state for those services.”⁶⁶ The Commission further found that “[t]here is virtual universal agreement that what is required is an effective statewide structure designed to monitor and enforce compliance with existing norms and standards that govern the representation of indigent defendants.”⁶⁷ At that point in time, although the status quo was clearly untenable, the future remained uncertain.

Abraham Lincoln long ago recognized that “the best way to predict your future is to create it.” For too long, the public defense system in New York desperately required a serious commitment from the State to rectify the ongoing injustice perpetrated upon men and women facing the extreme consequences wrought by the criminal justice system simply because they lacked the financial means to ensure protection of their constitutional rights and basic dignity. To its credit, New York State has taken bold strides to create a brighter future for the public defense system by making a substantial commitment to redressing the grievous lack of funding and oversight that plagued the system and led to the scathing conclusions of the Kaye Commission.

The reforms discussed in this Quality Improvement Report attest to the great progress that New York is achieving with Statewide funding, as well as ILS' guidance in achieving this progress. These quality improvement reforms are just one piece of the comprehensive statewide solution, however. They work in conjunction with Statewide funding for caseload relief and counsel at

⁶⁶ Kaye Commission Report at 15

⁶⁷ *Id.*

first appearance. Together, they mutually support New York's demonstrated commitment to the five original *Hurrell-Harring* settlement counties in 2015, and funding that ILS has directed across New York through statutory distributions and competitive grants since 2011. The totality of these commitments has set New York on the path to national recognition as a model for public defense reform.

New York must steadfastly continue to maintain its noble commitment to improving public defense. As the powerful reaction to the horror of George Floyd's killing reveals, the people of New York, and indeed the entire United States are demanding criminal justice reform. Support for public defense is an inextricably intertwined part of those cries for justice and a necessary bulwark against the neglect and the institutionalized racism that have unfortunately characterized the criminal justice system. ILS will continue to work with the State, all sixty-two counties, and each individual program to fully implement these reforms so that no client is left to suffer the indignity of having an attorney without the commitment, the skill, and the resources to protect their constitutional rights.

Appendix A. Quality Improvement structures and programs funded in the 52 counties and New York City.

County	Supervision		Training			Non-Attorney Professional Services		Client Communication ⁱ		Attorney Qualifications and Experience				Data Reporting Infrastructure	
	Hiring supervising attorneys	Funding for mentor & resource attorneys	Funding for training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Hiring non-attorney professionals	Funding for cellphones, text messaging programs, websites	Funding for attorney mileage	Attorney salary enhancements	Funding for ACP Administrators	Funding for attorney licensing / professional memberships	Funding to contract with attorneys with specialized expertise	Funding for case management systems	Funding for Data Officer
Albany*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	✗	✓
Allegany	✗	✗	✓	✗	✗	✓	✗	✗	✗	✓	✗	✗	✗	✓	✗
Broome	✓	✗	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓	✓
Cattaraugus	✗	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✓	✓	✗	✗
Cayuga	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Chautauqua	✓	✗	✗	✗	✗	✗	✓	✗	✗	✓	✓	✗	✗	✗	✓
Chemung	✓	✗	✓	✗	✓	✓	✓	✓	✓	✗	✓	✓	✗	✓	✓

	Supervision		Training			Non-Attorney Professional Services		Client Communication ⁱ		Attorney Qualifications and Experience				Data Reporting Infrastructure	
County	Hiring supervising attorneys	Funding for mentor & resource attorneys	Funding for training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Hiring non-attorney professionals	Funding for cellphones, text messaging programs, websites	Funding for attorney mileage	Attorney salary enhancements	Funding for ACP Administrators	Funding for attorney licensing / professional memberships	Funding to contract with attorneys with specialized expertise	Funding for case management systems	Funding for Data Officer
Chenango	✗	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗	✗	✗	✓	✓
Clinton*	✓	✗	✓	✗	✓	✓	✓	✓	✓	✗	✗	✓	✗	✓	✓
Columbia	✗	✗	✓	✗	✗	✓	✓	✗	✗	✓	✗	✗	✗	✓	✗
Cortland*	✗	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✗	✓	✓
Delaware*	✓	✗	✓	✗	✓	✓	✓	✓	✗	✗	✗	✗	✗	✗	✗
Dutchess*	✓	✗	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✗	✓	✗
Erie	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✗	✓
Essex	✓	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✗	✗	✗	✓

	Supervision		Training			Non-Attorney Professional Services		Client Communication ⁱ		Attorney Qualifications and Experience				Data Reporting Infrastructure	
County	Hiring supervising attorneys	Funding for mentor & resource attorneys	Funding for training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Hiring non-attorney professionals	Funding for cellphones, text messaging programs, websites	Funding for attorney mileage	Attorney salary enhancements	Funding for ACP Administrators	Funding for attorney licensing / professional memberships	Funding to contract with attorneys with specialized expertise	Funding for case management systems	Funding for Data Officer
Franklin	✗	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗	✗	✗	✓	✓
Fulton*	✓	✗	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓
Genesee	✗	✗	✓	✗	✓	✓	✗	✓	✓	✗	✗	✓	✓	✓	✗
Greene	✓	✗	✗	✗	✗	✗	✓	✗	✗	✓	✓	✗	✗	✓	✓
Hamilton*	✓	✗	✗	✗	✓	✗	✓	✓	✗	✗	✓	✗	✗	✗	✗
Herkimer	✓	✓	✗	✓	✓	✓	✗	✗	✓	✗	✓	✗	✗	✗	✓
Jefferson	✓	✗	✓	✗	✗	✓	✓	✗	✓	✗	✓	✗	✗	✓	✓
Lewis*	✓	✗	✓	✗	✓	✓	✓	✗	✓	✓	✓	✗	✓	✓	✓

	Supervision		Training			Non-Attorney Professional Services		Client Communication ⁱ		Attorney Qualifications and Experience				Data Reporting Infrastructure	
County	Hiring supervising attorneys	Funding for mentor & resource attorneys	Funding for training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Hiring non-attorney professionals	Funding for cellphones, text messaging programs, websites	Funding for attorney mileage	Attorney salary enhancements	Funding for ACP Administrators	Funding for attorney licensing / professional memberships	Funding to contract with attorneys with specialized expertise	Funding for case management systems	Funding for Data Officer
Livingston	✗	✗	✓	✗	✓	✓	✓	✓	✗	✓	✗	✗	✓	✓	✓
Madison	✗	✗	✓	✗	✗	✓	✓	✗	✗	✓	✗	✓	✗	✓	✓
Monroe*	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✗	✗	✓	✓	✓
Montgomery*	✓	✗	✓	✗	✓	✓	✓	✗	✓	✗	✓	✗	✓	✓	✓
Nassau*	✓	✗	✓	✓	✗	✓	✓	✗	✓	✗	✗	✓	✗	✓	✓
New York City	✓	✗	✓	✗	✓	✓	✓	✗	✓	✓	✗	✓	✗	✗	✗
Niagara	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓	✗	✗	✗	✓	✓
Oneida	✗	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✓	✗	✗	✓

	Supervision		Training			Non-Attorney Professional Services		Client Communication ⁱ		Attorney Qualifications and Experience				Data Reporting Infrastructure	
County	Hiring supervising attorneys	Funding for mentor & resource attorneys	Funding for training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Hiring non-attorney professionals	Funding for cellphones, text messaging programs, websites	Funding for attorney mileage	Attorney salary enhancements	Funding for ACP Administrators	Funding for attorney licensing / professional memberships	Funding to contract with attorneys with specialized expertise	Funding for case management systems	Funding for Data Officer
Orange	✓	✓	✓	✓	✓	✓	✓	✗	✗	✓	✓	✗	✓	✓	✓
Orleans*	✗	✗	✓	✗	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓
Oswego	✗	✗	✓	✗	✓	✓	✓	✓	✓	✓	✗	✗	✓	✗	✗
Otsego*	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗	✗	✗	✓
Putnam	✓	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗	✗	✗	✗	✓
Rensselaer	✓	✗	✓	✗	✓	✓	✓	✗	✗	✗	✓	✗	✗	✓	✓
Rockland	✗	✓	✓	✓	✓	✓	✓	✗	✗	✓	✗	✗	✗	✓	✗
Saratoga*	✓	✗	✓	✗	✗	✓	✓	✗	✓	✗	✓	✗	✗	✗	✓

County	Supervision		Training			Non-Attorney Professional Services		Client Communication ⁱ		Attorney Qualifications and Experience				Data Reporting Infrastructure	
	Hiring supervising attorneys	Funding for mentor & resource attorneys	Funding for training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Hiring non-attorney professionals	Funding for cellphones, text messaging programs, websites	Funding for attorney mileage	Attorney salary enhancements	Funding for ACP Administrators	Funding for attorney licensing / professional memberships	Funding to contract with attorneys with specialized expertise	Funding for case management systems	Funding for Data Officer
Ulster	✓	✗	✗	✗	✗	✓	✓	✗	✗	✓	✓	✗	✗	✓	✓
Warren*	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓
Wayne*	✗	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	✓	✓	✓	✓
Westchester	✗	✓	✓	✓	✓	✓	✓	✗	✓	✗	✗	✗	✗	✗	✓
Wyoming*	✗	✗	✓	✗	✗	✓	✓	✗	✗	✓	✗	✗	✗	✓	✗
Yates	✗	✗	✓	✗	✓	✓	✗	✗	✗	✓	✗	✓	✗	✓	✓
TOTAL # OF ✓ COUNTIES	30	18	41	17	32	45	45	17	27	28	22	19	15	32	39

* All counties have an executed Statewide contract with a Year 1 budget. These counties with asterisks also have an approved Year 2 budget.

ⁱ For 2 counties, an “other” type of client communication was funded in year 1. For the Genesee Public Defender’s Office, the budget included funding for emergency client transportation. For the Legal Aid Society in New York City the budget included funding for “communications”.

Appendix B

County	Funding to hire ACP Administrator or supervising attorney	Funding for mentoring and resource attorneys	Funding for panel attorneys to attend training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Funding to hire non-attorney professionals	Funding for ACP office space
Clinton*	x	x	x	x	x	x	x	x
Columbia	x	x	x	x	x	✓	x	x
Cortland*	x	✓	✓	✓	✓	✓	x	✓
Delaware*	x	x	x	x	x	x	x	x
Dutchess*	✓	x	✓	✓	x	✓	✓	x
Erie	✓	✓	x	✓	x	✓	✓	x
Essex	✓	x	x	x	x	x	x	x
Franklin	x	x	x	x	x	x	✓	✓
Fulton*	✓	x	✓	x	✓	✓	✓	x

County	Funding to hire ACP Administrator or supervising attorney	Funding for mentoring and resource attorneys	Funding for panel attorneys to attend training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Funding to hire non-attorney professionals	Funding for ACP office space
Putnam	x	x	x	x	x	✓	x	x
Rensselaer	✓	x	x	x	x	x	x	x
Rockland	x	✓	x	✓	x	✓	x	✓
Saratoga*	✓	x	✓	x	x	✓	x	x
Schenectady	✓	✓	✓	x	x	✓	✓	x
Schoharie*	✓	✓	✓	✓	✓	✓	✓	x
Seneca	x	x	✓	x	x	✓	x	x
St. Lawrence	x	✓	✓	x	x	✓	x	x
Steuben*	x	✓	✓	x	x	✓	x	x

County	Funding to hire ACP Administrator or supervising attorney	Funding for mentoring and resource attorneys	Funding for panel attorneys to attend training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Funding to hire non-attorney professionals	Funding for ACP office space
Sullivan*	✓	✗	✓	✗	✗	✗	✗	✗
Tioga*	✗	✗	✓	✗	✗	✓	✓	✗
Tompkins	✗	✓	✓	✓	✗	✓	✗	✗
Ulster	✓	✗	✗	✗	✗	✗	✓	✓
Warren*	✗	✓	✗	✓	✓	✓	✓	✗
Wayne*	✗	✓	✓	✓	✓	✓	✓	✗
Westchester	✗	✓	✓	✓	✓	✗	✓	✗
Wyoming*	✗	✗	✓	✗	✗	✓	✓	✗
Yates	✗	✗	✓	✗	✓	✓	✗	✗

County	Funding to hire ACP Administrator or supervising attorney	Funding for mentoring and resource attorneys	Funding for panel attorneys to attend training, conferences, and CLEs	Funding for second chair programs	Funding for legal reference material	Funding to retain non-attorneys providing professional services	Funding to hire non-attorney professionals	Funding for ACP office space
TOTAL # OF ✓ COUNTIES	25	18	32	17	19	37	21	8

* indicates a county with an approved year 2 statewide contract. All counties have an approved year 1 statewide contract.

